

Internal Revenue Service

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B04
PLR-119986-14

Date:
September 16, 2014

TY:

Legend

Taxpayer =
Year 1 =
Year 2 =
Firm =

Dear :

This letter responds to your request for an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make an election under § 108(c)(3)(C) of the Internal Revenue Code. Specifically, you have requested an extension of time to make an election under § 108(c)(3)(C) and § 1.108-5(b) of the Income Tax Regulations, to exclude income resulting from the discharge of qualified real property business indebtedness and to reduce the basis of depreciable real property, effective for Taxpayer's Year 1 return.

Facts

Taxpayer, an individual, uses the cash method of accounting and has a calendar year as an annual accounting period. Taxpayer is a partner in various real estate partnerships (Partnerships), which are calendar year-end partnerships that file their tax returns using the accrual method of accounting. Taxpayer's business operations involve the acquisition, development, construction, sale, leasing and management of commercial real estate properties.

During Year 1, Partnerships restructured debt. The Partnerships hired Firm to prepare their tax returns for Year 1. After informing Firm of the restructured debt, Firm

concluded that Partnerships realized cancellation of debt (COD) income. Firm prepared the federal income tax returns for the Partnerships and reported the COD income on the Partnerships' tax returns and respective K-1 Schedules for each of the affected Partnerships.

Taxpayer also hired Firm to prepare Taxpayer's federal income tax return for Year 1. Taxpayer reasonably relied on Firm; with the understanding Firm also prepared the Partnerships' Year 1 tax returns. Taxpayer provided Firm with Partnerships' Schedule K-1s in order to prepare Taxpayer's federal income tax return for Year 1. Firm did not file Form 982 with Taxpayer's tax return or advise Taxpayer about the opportunity to exclude COD income reported on the K-1's from the Partnerships as qualified real property business indebtedness. Taxpayer timely filed the Year 1 federal income tax return.

Taxpayer obtained different tax advisers in Year 2. These advisers indicated that Taxpayer may have been able to exclude the COD income under § 108(a)(1)(D) and advised taxpayer to file a request for an extension of time to make the election under § 108(c)(3)(C). Taxpayer terminated Taxpayer's relationship with Firm and filed this request.

Taxpayer represents that granting relief under § 301.9100-3 will not result in a lower tax liability in the aggregate for all years to which the election applies than the taxpayer would have had if the election had been timely made. Taxpayer also represents that the failure to make the election has not been discovered by the Service.

Applicable Law

Section 108(a)(1)(D) provides that gross income does not include any amount that would be included in gross income by reason of the discharge of indebtedness if, in the case of a taxpayer other than a C corporation, the indebtedness discharged is qualified real property indebtedness.

Section 108(c)(1) provides that the amount excluded from gross income is applied to reduce basis of the depreciable real property of the taxpayer. Section 108(c)(3)(C) requires a taxpayer to make an election to have § 108(a)(1)(D) apply.

Section 108(d)(6) provides that in the case of a partnership, § 108(a) and § 108(c) apply at the partner level.

Section 1.108-5(b) provides that the election under § 108(c)(3)(C) is made on the timely-filed (including extensions) Federal income tax return for the taxable year in which the taxpayer has discharge of indebtedness income that is excluded from gross income under § 108(a). The election is made on a completed Form 982, in accordance with that Form and its instructions.

Sections 301.9100-1 through § 301.9100-3 provide the standards that the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-3(a) provides that requests for extensions of time for regulatory elections (other than automatic extensions covered in § 301.9100-2) will be granted when the taxpayer provides evidence (including affidavits) to establish that the taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the Government.

Under § 301.9100-3(b), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer requests relief before the failure to make the regulatory election is discovered by the Service, or reasonably relied on a qualified tax professional, and the tax professional failed to make, or advise the taxpayer to make, the election. A taxpayer will not be considered to have reasonably relied on a qualified tax professional if the taxpayer knew or should have known that the professional was not competent to render advice on the regulatory election or aware of all the relevant facts.

Under § 301.9100-3(b)(3), a taxpayer is deemed to have not acted reasonably and in good faith if the taxpayer—

- (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 at the time the taxpayer requests relief, and the new position requires or permits a regulatory election for which relief is requested;
- (ii) was fully informed of the required election and related tax consequences, but chose not to file the election; or
- (iii) uses hindsight in requesting relief. If specific facts have changed since the original deadline that make the election advantageous to a taxpayer, the Service will not ordinarily grant relief.

Section 301.9100-3(c)(1)(i) provides that the Service will grant a reasonable extension of time only when the interests of the Government will not be prejudiced by the granting of relief. The interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made.

Section 301.9100-3(c)(1)(ii) provides that the interests of the government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable year that would have been affected by the election had it been timely made are closed by the period of limitation on assessment under § 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

Based on the information submitted by Taxpayer, we conclude that (1) Taxpayer acted reasonably and in good faith under § 301.9100-3(b), and (2) the interests of the Government will not be prejudiced by the granting of relief under § 301.9100-3(c).

Conclusion

Accordingly, based solely on the information submitted and the facts represented in the ruling request, and provided that the Operating Division Director does not determine that Taxpayer is subject to an accuracy-related penalty under § 6662, we grant Taxpayer an extension of 45 days from the date of this letter ruling to file an amended return to make the election under § 108(c)(3)(C) and § 1.108-5(b). The election is to be made on Form 982.

The ruling contained in this letter is based upon the information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. Although this office has not verified any of the material submitted in support of the request for the ruling, that material is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, this letter does not rule on whether the income at issue is properly treated as cancellation of indebtedness income under § 61(a)(12). In addition, except for the relief granted to make a late election, this letter also does not rule on whether the income in fact qualifies for exclusion from income under any provision of § 108 (including § 108(a)(1)(D)).

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Enclosed is a copy of the letter showing the deletions proposed to be made when it is disclosed under § 6110. If you have any questions concerning this matter, please contact the individual whose name and telephone number appear at the beginning of the letter.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, a taxpayer filing a return electronically may satisfy this requirement by attaching a statement to the return that provides the date and control number of the letter ruling.

Sincerely,

Michael J. Montemurro
Chief, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)